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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

PARK ANDERSON, et al.,

Petitioners,

vs.

BOBBY BATTLE, et al.,

Respondents,

and

Intervenor,
UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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QUESTIONS PRESENTED

On the single issue of racial equality in the prison system, the circuit court remanded this case for findings and conclusions "in accordance with Rule 52(a)." The district court made findings of fact supported by record citations and made conclusions of law. On a second appeal, without addressing the findings and conclusions in any way and without mention of Rule 52(a), the circuit court vacated the Order and Judgment of the district court and remanded again.

The questions presented are:

1. Whether the circuit court can simply ignore fully supported findings of fact and conclusions of law by the district court and remand the case again

without noting any error in the findings and conclusions.

2. Whether the district court's findings of fact are entitled to a presumption of correctness and ought to be reinstated.

LIST OF PARTIES

The parties to the proceedings below were:

Bobby Battle as the representative of the class of prisoners;

Park Anderson's successor as Warden of Oklahoma State Penitentiary, Dan Reynolds;

J. M. Sunderland's successor as Warden of Oklahoma State Reformatory, Steve Hargett;

Ned Benton's successor as Director of the Oklahoma Department of Corrections, Gary Maynard;

The present members of the Board of Corrections: William E. Beckman, Chairman; Phil Dessauer, Vice-Chairman; Calvino Samuel Muse, Sr., Secretary; Gregory H. Hall, Member; Hugh Reed, Member; James

Michael Stuart, Member; and Betty Sue Tow, Member;

The United States of America is an intervenor in this action; originally on the side of the Respondents and finally on the side of the Petitioners.

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UNITED STATES OF AMERICA,
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The Petitioners, Park Anderson and others, respectfully pray that a writ of certiorari issue to review the Order and Judgment of the United States Court of Appeals for the Tenth Circuit, entered in

the above-entitled proceeding on October 3, 1991.

OPINIONS BELOW

The December 13, 1991, Order of the Court of Appeals for the Tenth Circuit denying rehearing and rehearing en banc is reproduced in the Appendix, p. 63.

The October 3, 1991, Order and Judgment of the Court of Appeals for the Tenth Circuit is reproduced in the Appendix, p. 58.

The December 22, 1989, Opinion of the District Court for the Eastern District of Oklahoma is reproduced in the Appendix, p. 43.

The April 16, 1986, Opinion of the Court of Appeals for the Tenth Circuit which originally remanded the question of racial equal protection is published at

788 F.2d. 1421 and is reproduced in the Appendix, p.3.

JURISDICTION

This suit was originally brought in the United States District Court for the Eastern District of Oklahoma under 42 U.S.C. § 1983.

The particular portion of the case which is the subject of this Petition is an appeal decided by the United States Court of Appeals for the Tenth Circuit on October 3, 1991. Rehearing and rehearing en banc was sought and was denied on December 13, 1991.

The jurisdiction of this Court to review the judgment of the Tenth Circuit is invoked under 28 U.S.C. § 1254(1).

STATUTES, CONSTITUTIONAL PROVISIONS, AND RULE INVOLVED

The Eighth Amendment to the United States Constitution; 42 U.S.C. § 1983; Rule 52(a) Federal Rules of Civil Procedure. These are reproduced in the Appendix, pp. 1 & 2.

STATEMENT OF THE CASE

This class action was brought in 1972 under 42 U.S.C. § 1983 claiming that unconstitutional conditions existed in Oklahoma prisons. In December 1983, after a nine day trial was held in September, the district court dismissed its continuing supervision over the Oklahoma prison system, finding that the system was constitutional, had been so since October 1982, and that there was no reasonable expectation that unconstitutional

conditions would recur. Battle v. Anderson, No. 72-95, Memorandum Opinion and Order, pp.7 & 8, (December 30, 1983).

The Respondents appealed. The Court of Appeals for the Tenth Circuit affirmed the dismissal and the cessation of supervision but, on the single issue of racial equality in the prison system, remanded for "such further proceedings as the district court deems proper" and for findings and conclusions "in accordance with Rule 52(a)". Battle v. Anderson, 788 F.2d 1421, 1425 (10th. Cir. 1986), Appendix p. 22. (The decision was rendered in 1986 but the mandate did not issue until May, 1989). Rehearing and rehearing en banc was denied.

On remand the district court asked both parties to submit those portions of

the record which they believed should form the basis of the findings of fact on the equal protection issue. The Petitioners filed proposed findings and conclusions with references to the trial transcript. The Respondents submission did not refer to the transcript, but instead relied only on the report of the fact finder.

Based on the submissions of the parties and its own earlier "exhaustive study and review of the record", (Memorandum Opinion cited above, p. 5) the district court entered findings of fact with references to the record and also entered conclusions of law. The district court concluded that the Petitioners' "expressed intent, practices, and policies are to prohibit and prevent invidious racial discrimination" and that they "have

not denied [Respondents] equal protection of law under the Fourteenth Amendment by racial discrimination."

Again, the Respondents appealed. This time, with no mention of Rule 52(a), and with no finding of any error on the part of the district court, a panel of the Tenth Circuit vacated the order of the district court and again remanded stating only, "[u]pon consideration of the record, the briefs, and the arguments of counsel, the order and judgment of the district court is VACATED." Again, rehearing and rehearing en banc was denied.

REASONS FOR GRANTING THE WRIT

I

THE DECISION OF THE TENTH CIRCUIT, WHICH SUMMARILY VACATED THE FINDINGS AND CONCLUSIONS OF THE DISTRICT COURT WITHOUT FINDING ANY ERROR IN THEM, IS A SERIOUS DEPARTURE FROM ACCEPTED PRACTICE, FROM THE DICTATES OF RULE 52, AND FROM THE PRECEDENTS OF THIS COURT.

A. The Law

Rule 52(a) of the Federal Rules of Civil Procedure plainly states that when an action is tried to the court without a jury the court shall make specific findings of fact and conclusions of law and those "[f]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous."

This Court first addressed the Rule in United States v. United States Gypsum,

333 U.S. 364, 396 (1948), in which the Court declared that "[a] finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed."

The Court has written on the Rule some thirty times since Gypsum in cases involving, for example: patents, (Dennison Mfg. Co. v Panduit Corp., 475 U.S. 809 (1986)); the Rule's application in Fair Labor Standards cases, (Icicle Seafoods, Inc. v. Worthington, 475 U.S. 709 (1986)); the commerce clause, (Maine v. Taylor, 477 U.S. 131 (1986)); death qualification of jurors, (Lockhart v. McCree, 476 U.S. 162, (1986)); procedural default in habeas corpus cases, (Amadeo v. Zant, 486 U.S.

214 (1988)); and sex discrimination under Title VII, (Anderson v. Bessemer City, 470 U.S. 564 (1985)). But the Court has never deviated from the meaning of clearly erroneous or from the appellate court's responsibility to acknowledge and apply Rule 52(a).

In Anderson v. Bessemer City, the Court quoted the definition of clearly erroneous from Gypsum and then wrote:

> This standard plainly does not entitle a reviewing court to reverse the finding of the trier of fact simply because it is convinced that it would have decided the case differently. The reviewing court oversteps the bounds of its duty under Rule 52(a) if it undertakes to duplicate the role of the lower court. "In applying the clearly erroneous standard to the findings of a district court sitting without a jury, appellate courts must constantly have in mind that their function is not to decide factual issues de novo." [Citation omitted.] If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may

not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous. [Citation omitted.]

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This is so even when the district court's findings do not rest on credibility determinations, but are based instead on physical or documentary evidence or inferences from other facts.

Anderson v Bessemer City, 470 U.S. at 573-574.

Virtually all the Courts of Appeals recognize and apply the guidance given by this Court's opinions on Rule 52(a).[1]

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[1]Rodriquez-Morales v. Veterans Administration, 931 F.2d 980 (1st. Cir. 1991); Southside Fair Housing Committee v. City of New York, 928 F.2d 1336 (2nd. Cir. 1991); Price v. Austin Independent School District, 945 F.2d 1307 (5th. Cir. 1991); Kilburn v. United States, 938 F.2d 666 (6th. Cir. 1991); Daniels v. Essex Group, 937 F.2d 1264 (7th. Cir. 1991); Murdock v. United States, 951 F.2d 907 (8th. Cir. 1992); United States v. Fidelity Capital

Indeed, the Tenth Circuit recognizes this jurisprudence as well, and sometimes applies it. In a case decided just one month before this case, Quezada v. County of Bernalillo, 944 F.2d 710 (1991), a panel of the Tenth Circuit which included two of the same judges who decided this case considered and discussed Rule 52 at some length. In Quezada the appellees argued that the court of appeals should apply a de novo standard of review. The court rejected that argument finding that "the policy behind Rule 52 strongly supports the clear error standard." Quezada v. County of Bernalillo, 944 F.2d at 715.

Corp., 920 F.2d 827 (11th. Cir. 1991); American Hospital Assoc. v. Sullivan, 938 F.2d 216 (D.C. Cir. 1991).

And yet, one month later, that same court summarily rejected and vacated all of the findings of fact and conclusions of law of the district court in this case with no mention at all of Rule 52 and with absolutely no discussion or analysis of either the findings of fact or the conclusions of law. This is precisely what the Court of Appeals for the Ninth Circuit did and what this Court found fault with in Icicle Seafoods, Inc. v. Worthington, 475 U.S. 709, 713 (1986), in which this Court wrote: "[b]ut nowhere in its opinion did the court ever mention any of the factual findings of the District Court, much less discuss or analyze them."

The decision of the Tenth Circuit in this case is, therefore, in conflict not only with numerous decisions from the

other courts of appeal, it is also in direct conflict with this Court's precedents. In addition, the decision here - in such sharp contrast even with the Tenth Circuit's own earlier decision - represents a grave departure from the usual course of judicial proceedings.

B. The Consequences

The decision of the Court of Appeals is in conflict with the law. But perhaps even more important, it has serious social and policy consequences.

The effect of the Tenth Circuit's action is to vacate that portion of the district court's decision which dismissed continuing federal court supervision over the Oklahoma prison system on the question of racial balance and equality. The Oklahoma prisons have been found by both

the district court and the Tenth Circuit to be in compliance with the mandates of the Constitution since 1982. The district court dismissed this prison conditions suit and discontinued its supervision of Oklahoma's prisons in 1983. The Tenth Circuit affirmed that dismissal in 1986. Now, by its action in 1991, the Circuit has once again placed the Oklahoma prison system under federal court supervision on the issue of equal protection.

The effect of this on the State cannot be exaggerated. Now, when Oklahoma, like so many other states, is struggling to meet its fiscal and social responsibilities it is once again subject to the intervention of the federal courts in what ought to be its own prison operations. The resources of the Depart-

ment of Corrections as well as those of the Office of the Attorney General are once again focused on meeting the demands of Respondents' counsel on an issue which has been laid to rest twice already by the district court.

Nor is Oklahoma alone. There are many other states and local governments which have prison systems, or school systems, or other institutional systems operating under continuing federal court decrees.[2] If the Court of Appeals is permitted to substitute its judgment for

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[2]The Corrections Yearbook reports that in January, 1990, there were 38 agencies throughout the United States under court orders concerning conditions of confinement, seven more than the previous year. In addition, there were 144 class action lawsuits pending in January, 1990. Corrections Yearbook, 1990, Criminal Justice Institute.

that of the district court without justification, any one of those systems might well be subject to active intervention from the federal courts again.

The Attorney General of the United States recently addressed this issue in remarks he made to the California District Attorneys Association. General Barr stated:

> I recognize that the ability of states to manage their own prisons has been hampered by the involvement of federal courts in the day-to-day operation of state facilities. The 70's and 80's saw a flood of litigation in the federal courts by state prisoners challenging prison conditions as "cruel and unusual punishment."
>
> ***
>
> In many cases, these rulings - which are still in effect - have substantially increased the

costs of constructing and operating new prisons, and made it difficult for the states to use their existing correctional facilities efficiently.

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In my view, states should not be asked to operate under judicial decrees that in many instances were based on discredited legal theories and that impose unduly burdensome restrictions. We must allow state officials to exercise their lawful discretion.

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The business of running prisons belongs to the appropriate state officials, not to federal judges and special masters.

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The [Justice] Department should support termination in a timely manner of all litigation that limits the ability of a state to run its own prison facilities.

Excerpt of remarks by William P. Barr to the California District Attorneys

Association, Palm Springs, California, January 14, 1992.

This Court has spoken to the same effect in recent decisions. In both Board of Education of Oklahoma City Public Schools v. Dowell, 498 U.S. ___, 111 S.Ct. 630 (1991), and Rufo v. Inmates of Suffolk County Jail, ___ U.S. ___, 112 S.Ct. 748, (1992), this Court has recognized that federal intervention and supervision of state or local systems should be subject to modification and to termination. The Court wrote: "the public interest and 'considerations based on the allocation of powers within our federal system' Dowell, 111 S.Ct., at 632, require that the district court defer to local government administrators, who have the 'primary responsibility for elucidating, assess-

ing, and solving' the problems of institutional reform." Rufo v. Inmates, 112 S.Ct. at 764. Those same considerations require that neither the district court in eastern Oklahoma nor the Court of Appeals in Denver should continue to supervise the Oklahoma prison system - even on the limited issue of equal protection.

In addition to the social and political concerns raised by the Circuit's action here, there are concerns about the finality and reliability of court decisions and about judicial economy. As the Tenth Circuit itself recognized in its Quezada opinion, "there is a 'public interest in the stability and judicial economy that [is] promoted by recognizing that the trial court, not the appellate

tribunal, should be the finder of the facts'." Quezada v County of Bernalillo, 944 F.2d at 715.

That public interest is certainly neither recognized nor served by the Circuit's action in this case. The district court has conducted a nine day trial and has twice determined that based on the facts presented there is no constitutional violation. The Court of Appeals, although it has found no fault with either the facts or the conclusion, apparently believes that it might have decided the issue differently and so has sent it back once again; and, in the process, has reinstituted federal supervision which has not existed for nine years. Under these circumstances, there is no finality to the district court's

judgment and there is certainly no judicial economy.

II

THE 1989 OPINION OF THE DISTRICT COURT WAS CORRECT AND SHOULD BE AFFIRMED.

A. The District Court's Actions

In September of 1983 the district court held a nine day trial in this matter. The transcript of that trial filled six volumes. In addition to the transcript of the oral testimony there were numerous documents and a 175 page report prepared by the court appointed fact finder. The district court had all of this evidence before it, and by its own statement made an exhaustive study of the material. Clearly, there was ample evidence from which the district court

could determine whether there was intentional racial discrimination in the Oklahoma prison system.

The court studied the evidence and concluded that it was sufficient and that no further hearings or evidence were needed. It then pointed out that, contrary to the court's order, the Respondents had neither supported their proposed findings of fact with citations to the record, nor had they supported their proposed conclusions of law with citations of authority. The court then made three pages of specific findings of fact, each one with a reference to the place in the transcript or the fact finder's report where it was supported. Following the fact findings, the court drew conclusions of law, again, each

supported by citations to authority, virtually all of it from this Court.

In short, the district court did exactly what is required by Rule 52 and what was mandated by the Court of Appeals.

B. The Law

This Court has made clear that "a finding of intentional discrimination is a finding of fact, [thus] the standard governing appellate review of a district court's finding of discrimination is that set forth in Federal Rule of Civil Procedure 52(a)." Anderson v. Bessemer City, 470 U.S. at 573. This is so whether the finding is based on testimony, on documentary evidence, or on physical evidence. Id at 574. This is so even if "the factual findings at issue may

determine the outcome of the case." Maine v. Taylor, 477 U.S. 131, 145 (1986). It is so whether the case concerns civil rights, (Maine), antitrust, (United States v. Yellow Cab Co., 338 U.S. 338 (1949), or nearly any other area of the law. And it is so even if the trial court adopts one party's findings of facts verbatim. (Anderson v. Bessemer City, cited above.)

Here, the district court did as commanded by Rule 52 and by the Court of Appeals and it found, as a matter of fact, that there was "no evidence of any policy or practice by defendants which deny plaintiffs equal protection of law due to racial discrimination as concerns housing or cell assignments. To the contrary, this court finds that the intent and purpose of defendant's policies is to

discourage and eliminate racial discrimination in regard to housing." (1989 Opinion, App. p. 47, Fact 4.) The court made similar findings on discrimination in dining facilities and job assignments. (Id., Findings 6 & 8.)

There is no indication from the Court of Appeals that there is any flaw in those findings. In fact, the Court of Appeals did not discuss, analyze, or even mention a single one of the district court's findings. There is no indication from the Court of Appeals that the district court misunderstood or misapplied the law to the facts. Again, the Court of Appeals did not address a single conclusion of law.[3]

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[3]"If the trial judge correctly states the law, then his findings as to whether the facts meet the legal standard will be disturbed only if they are clearly

There is simply what appears to be a substitution of the Circuit Court's judgment for that of the district court. Such a substitution flies in the face of the express language of Rule 52 and of this Court's precedents. The substitution should be reversed, either after full briefing and argument or summarily, and the judgment of the district court reinstated.

CONCLUSION

The Court of Appeals ignored Rule 52(a), its own prior opinions, the opinions of its fellow circuit courts, and the precedents of this Court. In so doing, it resubmitted the Oklahoma prison

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erroneous." Daniels v. Essex Group, Inc., 937 F.2d 1264, 1269 (7th Cir. 1991) citing Pullman-Standard v. Swint, 456 U.S. 273 (1982).

system to federal judicial control some nine years after that control was lifted; interfered with the delicate balance between state and federal power; and wrought havoc with the notions of finality of judgment and judicial economy.

The findings of fact and conclusions of law and the judgment of the district court are fully supported in the record of this case. They are correct and cannot be reversed because they are not clearly erroneous.

The Petitioners urge this Court to vacate the order of the Tenth Circuit, either after full briefing and argument or summarily, and reinstate the judgment of the district court.

Respectfully submitted,

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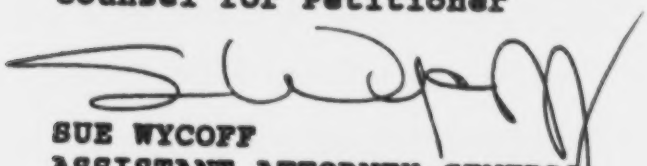

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